



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

VIA CERTIFIED MAIL

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Dave Sparks
1955 S. 1800 W.
Woods Cross, UT 84087

RE: Clean Air Act Concerns in *Diesel Brothers*, Season Two

Dear Mr. Ostrom, Ms. Palumbo Johnson, and Mr. Sparks:

I write to express concern with certain parts and services featured on *Diesel Brothers*, season two, episode 3, titled "Feed the Beast Mode." I invite you to discuss these concerns with us to ensure your work does not violate the Clean Air Act prohibitions against tampering and defeat devices.

In creating the Clean Air Act ("CAA"), Congress found that "the increasing use of motor vehicles...has resulted in mounting dangers to the public health and welfare." CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2). Accordingly, the CAA requires the Environmental Protection Agency ("EPA") to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or new motor vehicle engines that cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare. CAA § 202(a)(1), 42 U.S.C. § 7521(a)(1). Nonroad vehicles are also subject to the CAA. *See generally* CAA § 213, 42 U.S.C. § 7547. The Polaris RZR XP 4 1000 EPS High Lifter Edition ("RZR") featured in "Feed the Beast Mode" is one such nonroad vehicle covered by CAA § 213, 42 U.S.C. § 7547.

Nonroad vehicle manufacturers employ many devices and elements of design to meet emission standards. It is a violation of the CAA "for any person to remove or render inoperable any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with

regulations under this title prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser.” CAA § 203(a)(3)(A), 42 U.S.C. § 7522(a)(3)(A). The CAA also makes it a violation “for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where the principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” CAA § 203(a)(3)(A) and (B), 42 U.S.C. 7522(a)(3)(A) and (B); *see also* 40 C.F.R. § 1068.101(b) (restating tampering and defeat device prohibitions for nonroad products).

The EPA is concerned that some of work performed on the episode titled, “Feed the Beast Mode,” was not in compliance with the CAA. The EPA understands that the broadcasted content on *Diesel Brothers* may not represent all of the engine modification practices of the show’s participants, especially during the non-aired segments of the show. However, based on information available to the EPA and the content of “Feed the Beast Mode,” broadcast on the Discovery Channel, the EPA has concerns about *Diesel Brothers*’ compliance.

“Feed the Beast Mode” features a Polaris RZR XP 4 1000 EPS High Lifter Edition that was customized, apparently, for recreational use. Modifications to the RZR featured in the episode included the replacement of the stock exhaust assembly with an aftermarket exhaust assembly, and the installation of an aftermarket electronic control module (ECM). While the installation of such aftermarket products is not a *per se* violation of the CAA, it appears these changes may have adversely affected emissions. First, it appears you removed the muffler, including the muffler’s exhaust inlet, which is where the catalyst is located.¹ Second, your stated purpose for replacing the ECM was to “turn up the fuel tables.” Catalytic converters and fuel maps are emissions related elements of design subject to the CAA’s prohibitions on tampering and defeat devices.

In our previous letter, sent as a follow up to our July 12, 2016, phone call, we referred you to “Memo 1A,” which is the EPA’s tampering enforcement policy. Memo 1A establishes that the EPA is only concerned with the sale and use of aftermarket parts that increase emissions.² Our policy is that the installation of an aftermarket part is allowed only if there is a “a reasonable basis for knowing that such use will not adversely affect emissions performance.” If the original muffler in the RZR’s exhaust system contained a catalytic converter, and the new muffler did not contain the same catalytic converter or a California Air Resources Board certified catalytic converter, then there may be such an adverse effect on emissions performance. Additionally, if there is any adverse effect on the emissions from “turning up the fuel maps” with the replacement ECM, the installation of that ECM would be prohibited tampering.

¹ Shown at approximately 31:35 of the episode.

² U.S. Env’tl. Prot. Agency, Office of Enf’t and Gen. Counsel, Mobile Source Enforcement Memorandum No. 1A (1974), <https://www.epa.gov/enforcement/interim-tampering-enforcement-policy-memo-1a-june-25-1974> (last visited February 2, 2017).

A vehicle giveaway featured on the Dieselsellerz blog poses similar concerns.³ Listed among the modifications of the giveaway vehicle, a Polaris Turbo RZR 1000, are a "Packard Performance Tune," presumably an ECM modification or replacement, and a "Sparks Exhaust." Your website links to the Sparks Exhaust, which leads to the X-6 Stainless Steel Exhaust System from Sparks Racing.⁴ This system appears to replace the entire Polaris RZR Turbo exhaust system, including the muffler. As noted above, the catalyst in the RZR is located in the muffler inlet, thus installation of the Sparks Exhaust system would likely require removal of the stock catalyst. Catalysts and ECMs are emissions related design elements subject to the CAA's prohibition on tampering and defeat devices. As your giveaway vehicles are usually profiled on your show, we wanted to bring our concerns regarding this nonroad vehicle to your attention as well.

The EPA is committed to protecting public health by ensuring that motor vehicles and nonroad vehicles and engines meet pollution standards under the CAA. When we spoke previously, we appreciated your offer to feature a voiceover or interview with one of the stars of the show to make viewers aware that it is illegal to tamper with the emissions controls of certified motor vehicles. We hope that you will provide similar information to viewers in future episodes that feature nonroad vehicles, as those vehicles are also subject to the CAA. We all stand to benefit from your efforts to make viewers aware that the CAA prohibitions against tampering and defeat devices are in place for good reason: vehicle and engine emissions have been linked to premature death in people with heart or lung disease, aggravated asthma, decreased lung function, and increased respiratory problems.

Please do not hesitate to contact me with any questions or concerns. I can be reached at (202) 564-4904 or tozzi.lauren@epa.gov. I look forward to continuing to work with you to ensure that none of the parts or services featured on the show or the website violate the CAA prohibitions against tampering and defeat devices.

Sincerely,



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³ <https://www.dieselsellerz.com/blog/giveaway-builds/the-heavybadger/>

⁴ <http://www.sparksracing.com/x-6-stainless-steel-exhaust-system-polaris-2016-rzr-xp-turbo.html>